IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Criminal Revision No. 207 of 2001(New No)
Criminal Revision No. 1128 of 1993 (Old No.)

1. Mohan Lal Sharma
   R/o Civil Line
2. Km. Usha D/o Mohan Lal Sharma
   R/o Civil Line
   P.S. Civil Line
   Roorkee
   District Haridwar ..Revisionist/Applicants

Versus

State of U.P. ..Opposite Party

Sri Rajendra Singh learned counsel for the applicants
Sri Nandan Arya & Sri Lalit Verma learned A.G.A.

Hon'ble B.C. Kandpal, J.

This criminal revision arises out against the order and judgment dated 16.08.1993 passed by Ist Assistant Sessions Judge, Roorkee District Haridwar in Sessions Trial NO. 135 of 1992 ordering to summon the accused applicants/revisionists under Section 366 I.P.C.

The brief facts of the case are that the First Information Report was lodged against the Sanjay including applicants on 21.03.1991 under Section 363/366 I.P.C. at Police Station Kotwali Roorkee District Haridwar. After the investigation was over the chargesheet was submitted by the police against the accused Sanjay only on 29.03.1991.

After the submission of the chargesheet, learned Ist Assistant Sessions Judge proceeded with the trial and framed the charges against the accused Sanjay only under Section 366 I.P.C. on 11.06.1992.

The prosecution produced the witnesses and the deposition of the prosecutrix was recorded as P.W. – 2 on 23.12.1992. Further other witnesses were also examined and P.W.- 4 one of the witnesses Kalaram was examined by the prosecution on 30.03.1993, while the last witness P.W.-6 was examined on 29.04.1993. Thereafter, the statement of the accused Sanjay was recorded under Section 313 Cr.P.C. on 29.04.1993. After the aforesaid entire proceeding was over, an application was moved by the prosecution on 10.05.1993 for summoning the revisionists as accused before the court under Section 319 Cr.P.C.

The objection was filed by the accused Sanjay against the aforesaid application.

Learned Ist Assistant Sessions Judge vide his order dated 16.08.1993 directed that the revisionists Mohan Lal Sharma and Km. Usha be summoned to face the trial under Section 366 I.P.C.

Feeling aggrieved by the aforesaid impugned order the revisionists have preferred the revision before the Judicature of Allahabad High Court which has been transferred from Allahabad High Court after creation of Uttaranchal State.

Heard learned counsel for the parties and perused the record.

It appears from the record that the Investigation Officer ultimately submitted the chargesheet against the main accused Sanjay. The Investigating Officer thus could not collect any evidence against the revisionist during the course of the investigation. Hence the Investigation Officer has submitted the chargesheet against the accused Sanjay only on 29.03.1991.

The prosecution produced the P.W.-2 prosecutrix star witness on 23.12.1992 and in case, the prosecution in fact was interested in getting the revisionists summoned before the court to face their trial then immediately thereafter the prosecution could have moved an application on 23.12.1992 but no efforts had ever been made uptill 10.05.1993.

It is important to mention here that statement of the accused Sanjay was recorded on 29.04.1993 under Section 313 Cr.P.C. but till that stage the prosecution kept silent and did not make any effort to move the application under Section 319 Cr.P.C. When the case came to its fag end, the prosecution started making the efforts to summon the revisionists by way of moving application. It is important to mention here also that the entire prosecution evidence was over and the court below should have taken this aspect in mind that by summoning the revisionists to face the trial would amou8nt wasting the whole labour already under taken by the Court.

The Hon'ble Supreme Court in a case reported in **2000 CRI. L.J. 1706 Michael Machado Vs. Central Bureau of Investigation,** has observed as under:-

> "*The Court while deciding whether to invoke the power under Section 319 of the Code, must address itself about the other constraints imposed by the first limb of sub section (4), that proceedings in respect of newly added persons shall be commenced afresh and the witnesses re-examined. The whole proceedings must be re-commenced from the beginning of the trial, summon the witnesses once again and examine them and cross-examine them in order to reach the stage where it had reached earlier. If the witnesses already examined are*

quite a large in number, the Court must seriously consider whether the objects sought to be achieved by such exercise is worth wasting the whole labour already undertaken. Unless the Court is hopeful that there is reasonable prospect of the case as against the newly brought accused ending in conviction of the offence concerned we would say that the Court should refrain from adoption such a course of action."

In view of the aforesaid observations made by the Hon'ble Supreme Court, I come to the conclusion that this Court does not find any justification for summoning the revisionist to face the trial at the fag end.

The trial in the aforesaid criminal case against the accused Sanjay proceeded to the penultimate stage. All the prosecution witnesses were examined and the statement of the accused under Section 313 Cr.P.C. had also been recorded before the trial court. The order passed by the learned Assistant Sessions Judge for addition of more persons (revisionists) in the array as accused, merely because the statement of some witnesses created some suspicion against the revisionists does not appear to be reasonable. The order of the trial court in exercise of 319 of the Code of Criminal Procedure has to be interfered with for enabling the trial to proceed to its normal culmination. If the order of the Ist Assistant Sessions Judge is to be sustained, the proceedings in respect of newly added persons (revisionists) are to be recommenced afresh, which means that the entire massive evidence thus far collected and the time which the court has thus far spent for recording the evidence of number of witnesses, besides the cost involved for all concerned to reach up to the present stage, would all

become, for all practical purposes, a colossal waste. Hence it is not so very necessary at such belated stage to bring such two more additions to the array of the accused at the cost of such a de novo trial.

For the reasons stated above, I am of the view that present revision deserves to be allowed and the impugned order passed by court below liable to be set aside.

Accordingly the revision is allowed. The impugned order dated 16.08.1993 passed by Ist Assistant Sessions Judge, Roorkee District Haridwar is set aside.

I direct the trial court to proceed with the trial with the existing accused arraigned before the court expeditiously.

(B.C. Kandpal, J.)

July 21st, 2004
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